

PARVIZ DARABI, SBN 209021
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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANALI AMBRIZ, an individual,	)	CASE NO: CV 08 1004 JSW
)	
Plaintiff	)	PLAINTIFF, ANALI AMBRIZ'S, NOTICE OF
	)	MOTION & MOTION TO REMAND THIS
v.	)	MATTER TO CALIFORNIA STATE COURT,
	)	COUNTY OF CONTRA COSTA
LUXURY IMPORTS OF SACRAMENTO,)	
INC., dba SUZUKI OF SACRAMENTO;	)	Date: May 9, 2008
JPMORGAN CHASE BANK, a New York	)	Time: 9:00 a.m.
Corporation dba CHASE AUTO FINANCE,	)	Judge: Hon. Jeffrey S. White
and DOES 1 through 100, inclusive,)	
)	
)	
Defendants.)	
)	

TO (PLAINTIFF/DEFENDANT) AND ITS ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on May 9, 2008 at 9:00 a.m., or as soon thereafter as counsel may be heard by the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, California 94102, in the Courtroom of the Honorable Judge Jeffrey S. White, Plaintiff will and hereby does move the Court to Remand this matter back to the California State Court, County of Contra Costa. This Motion is brought on the grounds that Defendant, JPMORGAN CHASE BANK, N.A.'s removal of this case is procedurally improper pursuant

1 to 28 *USC* § 1446(b). It is also brought on the grounds that the Court lacks jurisdiction under
2 See 28 *USC* § 1332 since this is a dispute between two California citizens. This motion is
3 based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed
4 herewith, the declarations of William N. Blasser and Parviz Darabi, the pleadings and papers
5 on file herein, and upon such other matters which may be presented to the Court at the time of
6 the hearing.
7

8 Dated: March 19, 2008

9 LAW OFFICE OF PARVIZ DARABI
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12 Parviz Darabi, Esq.
13 Shelley R. O'Brien, Esq.
14 William N. Blasser, Esq.
15 Attorneys for Plaintiff
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MEMORANDUM OF POINTS & AUTHORITIES**I. Introduction & Background Facts**

Defendant's attempt to remove this dispute to Federal Court is a waste of the Court's time. It is designed to increase the costs associated with a case Defendant knows it cannot possibly win and flies in the face of the very statute it claims to rely upon (i.e., 28 USC § 1332). As such, the Court should remand the matter back to State Court.

Defendant is a corporation. It transacts business with California consumers on a regular basis. Indeed, Defendant registered itself with the State of California (i.e., California corporation number C0248426).

Plaintiff purchased a vehicle from Luxury Imports of Sacramento (hereinafter referred to as "Dealer"). Dealer violated various consumer protection statutes entitling Plaintiff to rescind her transaction and recover damages. Dealer also breached the contract by failing to pay off Plaintiff's trade in vehicle. Finally, Dealer violated the warranty of title because it did not own the vehicle it sold to Plaintiff.

Dealer filed for bankruptcy. Defendant accepted assignment of Plaintiff's contract and is liable for Dealer's violations under California and Federal law. Nevertheless, Defendant refuses to take responsibility for its obligations. Indeed, Defendant asserts it is entitled to collect money under the contract for a good to which the Dealer did not have title.

The purpose Defendant's attempt to remove the dispute is to force Plaintiff to spend as much time and money as possible in an attempt to make her "give up" and dismiss the case. As such, this motion should be granted and Defendant should be sanctioned.

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1 **II. When the Federal Courts Lack Jurisdiction Over a Dispute, it Should be**
 2 **Remanded**

3 If at any time before final judgment, it appears the court lacks subject matter jurisdiction,
 4 the court may remand the case to state court either sua sponte or on motion of a party. However,
 5 a motion to remand based on a defect in the removal procedure must be made within 30 days
 6 after filing of the notice of removal. See 28 USC § 1447(c); see also *McCaa v. Massachusetts*
 7 *Mut. Life Ins. Co.* (D. NV. 2004) 330 F.Supp.2d 1143, 1146 (citing text). The proper procedure
 8 for challenging removal is a Motion to Remand.
 9

10 Remand may be ordered either for lack of subject matter jurisdiction or for “any defect in
 11 removal procedure.” See 28 USC § 1447(c); see also *Buchner v. FDIC* (5th Cir. 1993) 981 F.2d
 12 816, 820. Hence, a Motion for Remand lies where there is no diversity of citizenship and can be
 13 raised at any time. See *International Primate Protection League v. Administrators of Tulane Ed.*
 14 *Fund* (1991) 500 U.S. 72, 87; *Bromwell v. Michigan Mut. Ins. Co.* (3rd Cir. 1997) 115 F.3d 208,
 15 213.
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17 Federal courts may also remand an action based on abstention principles. See
 18 *Quackenbush v. Allstate Ins. Co.* (1996) 517 U.S. 706, 730–731; *Corcoran v. Ardra Ins. Co., Ltd.*
 19 (2nd Cir. 1988) 842 F.2d 31. A remand premised on abstention is not based on a lack of subject
 20 matter jurisdiction or on a defect in removal procedure. Thus, the power to remand is *not* based
 21 on the statutory grounds set forth in 28 USC § 1447(c), but rather on the federal court's power to
 22 refrain from hearing cases based on “‘scrupulous regard for the rightful independence of the state
 23 governments' and for the smooth working of the federal judiciary.” See *Quackenbush v. Allstate*
 24 *Ins. Co.*, supra, 517 US at 718, (quoting *Railroad Comm'n of Tex. v. Pullman Co.* (1941) 312
 25 U.S. 496, 500–501).
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1 A Plaintiff's motion for remand effectively forces a defendant to prove by a
2 preponderance of evidence whatever is necessary to support the petition (e.g., the existence of
3 diversity, the amount in controversy, etc.). See *Gaus v. Miles, Inc.* (9th Cir. 1992) 980 F.2d 564,
4 566; *B., Inc. v. Miller Brewing Co.* (5th Cir. 1981) 663 F.2d 545, 549; *Kenneth Rothschild Trust*
5 *v. Morgan Stanley Dean Witter* (CD CA 2002) 199 F.Supp.2d 993, 1000. Indeed, the party
6 seeking removal also has the burden of showing that all *procedural* requirements for removal
7 (notice of removal, joinder, etc.) have been complied with. See *Parker v. Brown* (SD OH 1983)
8 570 F.Supp. 640, 642–643.
9

10
11 **A. Defendant's Request for Removal is Procedurally Improper**

12 In general, a defendant must file in the district court a notice of removal *within 30 days*
13 after receipt of the first pleading in the state action that sets forth a *removable* claim. Where
14 removability is uncertain, the 30–day period is measured from the point at which defendant had
15 notice that the action is removable; but in any event, removal based on *diversity* must be effected
16 *within 1 year* after the case is filed. See 28 USC § 1446(b). To trigger the 30–day removal
17 period, the facts supporting removal must be *evident on the face of the complaint*. Notice of
18 removability is determined by the “four corners of the applicable pleadings, not through
19 subjective knowledge or a duty to make further inquiry.” See *Harris v. Bankers Life & Cas. Co.*
20 (9th Cir. 2005) 425 F.3d 689, 694; *Lovern v. General Motors Corp.* (4th Cir. 1997) 121 F.3d
21 160, 162; *Whitaker v. American Telecasting, Inc.* (2nd Cir. 2001) 261 F.3d 196, 206.
22

23 In this case, Defendant neglected to file its Notice of Removal until February 19, 2008.
24 The complaint in this action was filed on November 13, 2007 and incorporates by reference a
25 demand letter sent to Defendant on September 11, 2007. See Exhibit A to Defendant's Notice of
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1 Removal. Plaintiff dismissed Luxury Imports of Sacramento on November 21, 2007. See
2 Exhibit C to Defendant's Notice of Removal.

3 The complaint and the letter both clearly demand the following: 1) rescission of a
4 contract worth \$43,615.92; 2) recovery of punitive damages; 3) recovery of attorney's fees and
5 costs; and 4) recovery of pre-judgment interest. Rescission of a \$43,615.92 contract and punitive
6 damages obviously total an amount greater than \$75,000.00. When one considers that attorneys
7 fees and costs are being sought, the facts pled in the Complaint make it evidence that over
8 \$75,000.00 is being disputed by the parties.
9

10 In addition to the complaint, **Plaintiff sent Defendant a demand letter on November**
11 **21, 2007 itemizing her demand for \$247,885.70.** See Exhibit 1. Hence, Defendant knew it was
12 the only named defendant and that the amount in controversy exceeded \$75,000.00 back in
13 November 2007. Since its Notice of Remand was filed over two months past that date, it is
14 procedurally improper pursuant to 28 USC § 1446(b).
15

16
17 **B. This Court Lacks Diversity Jurisdiction**

18 The basic diversity jurisdiction statute states the district courts shall have original
19 jurisdiction of all civil actions where: 1) the matter in controversy exceeds the sum or value of
20 \$75,000; and 2) is between citizens of different State. See 28 USC § 1332(a). Courts have
21 further **limited diversity jurisdiction** by construing the diversity statutes strictly. Any doubt
22 as to whether jurisdiction exists is normally resolved against a finding of such jurisdiction.
23 See *Kantor v. Wellesley Galleries, Ltd.* (9th Cir. 1983) 704 F.2d 1088, 1092; *Sheehan v.*
24 *Gustafson* (8th Cir. 1992) 967 F.2d 1214, 1215. Defendant, a corporation, claims the second
25 element is met because "its main office is located in the State of Ohio." **Defendant is**
26 **incorrect.**
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1 For diversity purposes, Corporations have *dual* citizenship. Specifically, a “corporation
2 shall be deemed a citizen of *any State by which it has been incorporated and of the State where*
3 *it has its principal place of business.*” See 28 USC § 1332(c)(1) (*emphasis* added). In other
4 words, Corporations which have freely and voluntarily applied for and received charters from
5 several states are deemed citizens of *each* of said states (and any other state in which their
6 principal place of business is located). See *Yancoskie v. Delaware River Port Authority* (3rd Cir.
7 1975) 528 F.2d 722, 727. The purpose of this rule is to prevent local businesses from
8 incorporating out-of-state in order to sue in or remove actions to federal court. See *J.A. Olson*
9 *Co. v. Winona* (5th Cir. 1987) 818 F.2d 401, 405; and *Co-Efficient Energy Systems v. CSL*
10 *Industries, Inc.* (9th Cir. 1987) 812 F.2d 556, 558.

13 As such, Corporations incorporated in one state (e.g., California), and having their
14 principal places of business in another (e.g., Ohio), are citizens of *both* states. They can be sued
15 in diversity actions only if no opposing party is a citizen of *either* state. See *Bank of Calif. Nat'l*
16 *Ass'n v. Twin Harbors Lumber Co.* (9th Cir. 1972) 465 F.2d 489, 491–492. This operates as a
17 significant limitation on federal diversity jurisdiction because dual citizenship increases the
18 chances that some opposing party will be a citizen of one of these states.

20 Here, Defendant is incorporated in California (California Corporation number
21 C0248426). See Exhibit 2. As such, it is a citizen of California. As Defendant’s Notice of
22 Removal admits, Plaintiff is also a citizen of California. Accordingly, this is not a dispute
23 between citizens of different states and the Court lacks Federal Diversity Jurisdiction.

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1 **III. This Court Should Sanction Defendant for its Attempt to Improperly Remove the**
 2 **Dispute**

3 On granting a motion for remand, the federal court may order the defendant to pay
 4 plaintiff its “just costs and any actual expenses, *including attorney fees*, incurred as a result of the
 5 removal.” See 28 USC § 1447(c) (emphasis added); see *Martin v. Franklin Capital Corp.* (2005)
 6 546 U.S. 132, 136. The statutory purpose is to deter the possibility of abuse, unnecessary
 7 expense and harassment if a defendant removes improperly. See *Circle Industries USA, Inc. v.*
 8 *Parke Const. Group, Inc.* (2nd Cir. 1999) 183 F.3d 105, 109. Thus, fees may be awarded only
 9 where a plaintiff is successful on a remand motion; the statute does *not* allow for a fee award to a
 10 defendant who successfully *opposes* a motion to remand. See *Circle Industries USA, Inc. v.*
 11 *Parke Const. Group, Inc.*, supra, 183 F.3d at 109.

12 It is not necessary to show that the removing party's position was “frivolous,
 13 unreasonable or without foundation” and there is no presumption against granting fees and costs.
 14 See *Martin v. Franklin Capital Corp.*, supra, 546 US at 136, 138. In fact, in deciding whether an
 15 award is “just” under § 1447(c), the key factor is the *propriety* of the removal; i.e., attorney's fees
 16 should be awarded when the removing party has no “objectively reasonable basis for removal.”
 17 See *Martin v. Franklin Capital Corp.*, supra, 546 US at 136. According to one court, “if *clearly*
 18 *established law did not foreclose* a defendant's basis for removal, then a district court should not
 19 award attorney's fees.” See *Lott v. Pfizer, Inc.* (7th Cir. 2007) 492 F.3d 789, 793. Here, **the**
 20 **established law (i.e., 28 USC § 1332(c)(1)) clearly forecloses Defendant’s basis for removal.**

21 Defendant’s **only** basis to remove this matter is its supposed “Ohio citizenship” and
 22 Diversity Jurisdiction. Defendant, however, is fully aware of its California corporate status and
 23 knows it is a California citizen. Indeed, Defendant’s Notice of Removal is littered with
 24

1 references indicating it read the statute which specifically states it is a citizen of California (e.g.,
2 pg. 2, ln. 1; pg. 3, ln. 5). Simply put, Defendant had no objectively reasonable basis to remove
3 this dispute and only did so to increase the costs of litigation; i.e., Defendant hopes Plaintiff's
4 attorneys will "give up" in the face of expensive law and motion.
5

6 Plaintiffs ask the Court to send a message to Defendant that such conduct will not be
7 tolerated. Specifically, Plaintiffs seek to recover \$6,000.00 in attorneys' fees and costs. This
8 amount is the total that Plaintiff incurred in preparing this motion, and also includes the amounts
9 Plaintiff expects to incur to respond to any opposition. See *Declaration of William Blasser*.
10

11 **IV. Conclusion**

12 For the reasons stated above, Plaintiff asks that her motion be granted in its entirety.
13 The matter should be remanded back to California State Court (County of Contra Costa), and
14 Defendant should pay all of Plaintiff's costs, including attorney's fees, associated with its
15 attempt to improperly remove the action.
16

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18 Dated: March 19, 2008
19 LAW OFFICE OF PARVIZ DARABI

20 /s/ William N. Blasser, Esq.

21 _____
22 Parviz Darabi, Esq.
23 Shelley R. O'Brien, Esq.
24 William N. Blasser, Esq.
25 Attorneys for Plaintiff
26
27
28

Law Office of Parviz Darabi

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November 21, 2007

VIA FACSIMILE ONLY (415-972-6301)

Pam Zanger
ROPER, MAJESKI, KHON & BENTLY

Re: Ambriz vs. Luxury Imports of Sacramento, et al.
C07-02403

Dear Ms. Zanger:

Per your request the following are my client's damages. Please review the damage calculation below, and get back to me with any reasonable settlement offer.

Down Payment	\$3,000.00
Total Payments	\$3,384.66
Payoff Estimate	\$40,231.66
Sub Total	\$46,616.32
Insurance	\$600.00
Interest	\$2,360.82
Sub Total	\$49,577.14
Punitive Damages	\$198,308.56
Grand Total	\$247,885.70

Be advised that the above mentioned damages do not include attorney's fees 01 costs, which will continue to increase.



Parviz Darabi

Sincerely,

PD: ib/erg



DISCLAIMER: The information displayed here is current as of MAR 14, 2008 and is updated weekly. It is not a complete or certified record of the Corporation.

Corporation

JPMORGAN CHASE BANK

Number: C0248426

Date Filed: 9/25/1950

Status: active

Jurisdiction: NEW YORK

Address

1111 POLARIS PARKWAY,
COLUMBUS, OH 43240

Agent for Service of Process

C T CORPORATION SYSTEM

818 WEST SEVENTH ST

LOS ANGELES, CA 90017

Blank fields indicate the information is not contained in the computer file.

If the status of the corporation is "Surrender", the agent for service of process is automatically revoked. Please refer to California Corporations Code Section 2114 for information relating to service upon corporations that have surrendered.

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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANALI AMBRIZ, an individual,	)	CASE NO: CV 08 1004 JSW
)	
Plaintiff	)	DECLARATION OF WILLIAM N. BLASSER,
	)	ESQ. IN SUPPORT OF PLAINTIFF, ANALI
v.	)	AMBRIZ'S MOTION TO REMAND THIS
	)	MATTER TO CALIFORNIA STATE COURT,
LUXURY IMPORTS OF SACRAMENTO,	)	COUNTY OF CONTRA COSTA
INC., dba SUZUKI OF SACRAMENTO;)	
JPMORGAN CHASE BANK, a New York	)	Date: May 9, 2008
Corporation dba CHASE AUTO FINANCE,	)	Time: 9:00 a.m.
and DOES 1 through 100, inclusive,	)	Judge: Hon. Jeffrey S. White
)	
)	
Defendants.)	
)	

I, William N. Blasser, declare:

I am one of the attorneys representing Plaintiff, Anali Ambriz, in this action. I have personal knowledge of each fact stated in this declaration.

1. Plaintiffs have incurred and will incur reasonable costs and attorney fees for bringing this motion in the amount of \$6,000.00, which is the costs associated with securing compliance with the Court's order, and preparing and filing this motion.

1 2. I spent ten hours to research and prepare this motion, notice of motion, proposed order
2 and memorandum of points and authorities. Based upon my experience, I can estimate
3 that I will spend two hours reviewing and analyzing any opposition this motion, six hours
4 preparing a reply to any opposition filed, and two hour to prepare for oral argument and
5 attend the hearing. My hourly rate is \$300.00. Thus, the total amount of attorneys fees
6 incurred is \$6,000.00.
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9 3. Attached to this motion as Exhibit 1 is a letter dated November 21, 2007. It was sent
10 from our office to counsel for Defendant.
11

12 4. Attached to this motion as Exhibit 2 is a print out from the California Secretary of State's
13 Business Portal website. It demonstrates that Defendant is an active California
14 Corporation and has been one since September 25, 1950.
15

16 I declare under penalty of perjury under the laws of the State of California that the foregoing is
17 true and correct.
18

19 DATE: MARCH 19, 2008

20 /s/ William N. Blasser, Esq.
21 _____

22 WILLIAM N. BLASSER, ESQ.
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